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*Counsel for Plaintiff
And the putative Class*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID CRAIG, an individual,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

CITY OF LOS ANGELES, a
municipal entity, and LOS ANGELES
POLICE DEPARTMENT, a
municipal entity,

Defendants.

Case No.: 2:23-cv-06581-SVW-JPR

CLASS ACTION

**SECOND AMENDED CLASS
ACTION COMPLAINT FOR
DAMAGES**

**VIOLATIONS OF 38 U.S.C. §4301
ET SEQ.**

**FILING FEE WAIVED PER 38
U.S.C. § 4323(h)**

DEMAND FOR JURY TRIAL

1 Plaintiff DAVID CRAIG (“Plaintiff”), on behalf of himself and all other
2 similarly situated, hereby submits his Second Amended Complaint against Defendants
3 CITY OF LOS ANGELES (“COLA”) and LOS ANGELES POLICE DEPARTMENT
4 (“LAPD”), as follows:

5 **I. NATURE OF THE ACTION**

6 1. This is a civil action brought pursuant to the Uniformed Services
7 Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 *et. seq.*
8 (“USERRA”). It is brought by Plaintiff on behalf of himself and a nationwide Class of
9 all persons similarly situated, including current and former employees of the City of
10 Los Angeles Police Department who were or are currently serving in the reserve
11 component of the United States Armed Forces and National Guard, including a Subclass
12 of those Class members who took unpaid military leave from LAPD.

13 **II. PARTIES**

14 **A. Plaintiff David Craig**

15 2. Plaintiff David Craig (“Plaintiff Craig”) is a citizen of the United States
16 and a resident of Idaho.

17 3. Plaintiff Craig was employed by Defendant and retired as a Police
18 Lieutenant II in the Los Angeles Police Department. At all times relevant, Plaintiff
19 Craig worked for Defendant in Los Angeles, California.

20 4. At all times relevant, Plaintiff Craig served as a commissioned officer in
21 the California Army National Guard (“CA-ARNG”).

22 5. During the relevant times referenced herein, Plaintiff Craig was a qualified
23 employee and member of the uniformed services as defined by 38 U.S.C. §4303(3) and
24 (16).
25
26

B. Defendants, the City of Los Angeles, and the Los Angeles Police Department

6. Plaintiff is informed, believes, and alleges that Defendant COLA is a municipal entity duly organized and existing under the Constitution and laws of the State of California and exercises authority in this judicial district. At all times relevant, COLA is and was an employer for purposes of 38 U.S.C. § 4303(4)(A) and § 4323(i).

7. Plaintiff is informed, believes, and alleges that Defendant LAPD is a municipal entity and an agency of Defendant COLA and exercises authority in this judicial district. At all times relevant, the LAPD is and was an employer for purposes of 38 U.S.C. § 4303(4)(A) and § 4323(i).

8. Whenever and wherever reference is made to individuals who are not named as defendants in this action, but were employees/agents of Defendants, or any of them herein, such individuals at all times acted on behalf of Defendants named in this action within the scope of their respective employments and agencies.

9. Whenever and wherever reference is made in this Complaint to any conduct of Defendants, or any of them, such allegations or references shall also be deemed to mean the conduct of each Defendant, acting individually, jointly and severally.

10. At all times relevant to this Complaint, Defendants were the agents and employees of their co-Defendants, and in doing the things alleged in this Complaint were acting within the course and scope of that agency and employment.

11. Plaintiff does not seek any category of relief greater than or different from the relief sought for the Class of which Plaintiff is a member. This action, if successful, will enforce an important right affecting the public interest and would confer a significant benefit, whether pecuniary or non-pecuniary, on a large class of persons.

1 Private enforcement is necessary and individual prosecution places a disproportionate
2 financial burden on Plaintiff in relation to Plaintiff's stake in the matter.

3 **III. JURISDICTION AND VENUE**

4 12. The jurisdiction of this court is founded on federal question jurisdiction,
5 28 U.S.C. §1331, as conferred by 38 U.S.C. §4323(b)(3).

6 13. Venue is proper because Defendant LAPD is a municipal entity and an
7 agency of Defendant COLA, exercising authority in this judicial district, as provided in
8 38 U.S.C. §4323(c)(1) and 28 U.S.C. §1391(b).

9 14. Pursuant to 38 U.S.C. § 4323(h), "No fees or court costs may be charged
10 or taxed against any person claiming rights under [USERRA]".

11 **IV. GENERAL ALLEGATIONS**

12 15. LAPD has policies and practices of denying benefits of employment to its
13 employees, including Plaintiff and the Class, because of their military service
14 obligations, in violation of USERRA. These violations include, but are not limited to:

- 15 A. Allowing vacation and sick time to accrue for employees on paid
16 military leave but not for employees on comparable, unpaid military
17 leave;
18 B. Limiting the amount of paid military leave to 174 hours, in violation
19 USERRA;
20 C. Reducing the number of credit hours converted from days to less than
21 eight (8) hours per day for military leave only, while allowing eight (8)
22 credit hours per days for other comparable forms of non-military leave;
23 D. Denying promotions to military servicemember employees who
24 perform military service obligations.

25 16. Plaintiff Craig enlisted in the United States Air Force Reserve (USAFR)
26

1 in 1991, serving three years before transferring to the CA-ARNG in 1994, and then
2 receiving a commission to the rank of Second Lieutenant in 1996.

3 17. Plaintiff Craig began his employment with the LAPD as a sworn officer in
4 January of 1995 as a Police Officer I. Throughout his twenty-eight-year career with the
5 LAPD, he progressed through the ranks up to the rank of Police Lieutenant II.

6 18. In 2006, Plaintiff Craig was promoted to the position of Police Detective
7 I, wherein he was hand-picked to conduct complex investigations into homicides,
8 robberies, and other high-profile crimes in the 77th Criminal Gang Homicide Group and
9 Southeast Patrol Divisions.

10 19. As a Police Sergeant I, Plaintiff Craig worked as a Patrol Supervisor in
11 West Los Angeles and 77th Patrol Division. Subsequently, he was selected to the
12 Operations South Bureau as the Special Events Coordinator, wherein he was
13 responsible for planning police response to large-scale public events, such as football
14 games, public demonstrations, parades, and other unusual occurrences.

15 20. As a Police Sergeant II, Plaintiff Craig worked in the Gang and Narcotics
16 Division as the Narco Administrative Supervisor and the Gun Unit Supervisor.

17 21. As a Police Lieutenant I, Plaintiff Craig worked as the West Valley Patrol
18 Watch Commander. During this time, Plaintiff Craig was tasked to fill in as the Patrol
19 Commanding Officer several times during the absence of the Patrol Commanding
20 Officer.

21 22. As a Police Lieutenant II, Plaintiff Craig worked as the Gang Impact Team
22 Officer in Charge in the West Valley Division, and was also placed in charge of the
23 Vice Unit. In this position, Plaintiff Craig grew the unit through recruiting excellent
24 people and expanded capacity through building relationships and coordination with
25 other agencies and adjacent units. Under his direction, the Narcotics Enforcement Detail
26

1 (“NED”) coordinated with the California Cannabis Enforcement Unit and other
2 Division NEDs leading to significant seizures of marijuana and the closure of dozens
3 of illegal cannabis grows and retail establishments.

4 23. Plaintiff Craig’s academic accomplishments include a Bachelor of Arts
5 degree in History, an Associates of Science in Aircraft Systems Maintenance, and a
6 Master of Arts degree in Homeland Security (*cum laude*).

7 24. Specific to his duties as a law enforcement officer, Plaintiff Craig earned
8 academic credentials by completing the Basic, Intermediate, Advanced, Supervisory,
9 and Management Certificates from the California Commission on Police Officer
10 Standards and Training (POST). He has also completed the POST Management course,
11 the Intermediate Incident Command System course, the Advanced Command General
12 Staff course, and the Enhanced All Hazards Incident Management Course.

13 25. Much of Plaintiff Craig’s military experience contributes to his career in
14 law enforcement. For example, when Plaintiff Craig was hand-selected to serve as a
15 Police Advisor to the Kandahar Chief of Police in 2017-2018 while in support of
16 Operation Freedom’s Sentinel. In this role, he advised an Afghan General in all facets
17 of Police training and employment.

18 26. During Plaintiff Craig’s over thirty-two years military career, he has held
19 several key leadership responsibilities, including command of a Field Artillery
20 Battalion composed of over five hundred soldiers which was recognized as the best in
21 the California Army National Guard in the metrics of military readiness and retention.
22 His many accomplishments have been recognized by award of the Combat Action
23 Badge, Bronze Star Medal, Meritorious Service Medal, Army Commendation Medal,
24 Air Force Commendation Medal, Army Achievement Medal, Air Force Achievement
25 Medal, Military Outstanding Volunteer Service Medal, and the California Medal for
26

1 Merit.

2 27. Throughout the entirety of his career with the LAPD, Plaintiff Craig
3 attended monthly inactive duty training periods, or “battle assembly,” per his military
4 service obligation with the CA-ARNG. These lasted approximately two-to-four days
5 each, and generally occurred during the weekend. However, some of the battle
6 assemblies required Plaintiff Craig to take unpaid military leave from his employment
7 with LAPD during the week to accommodate the CA-ARNG training requirements.

8 28. Despite having a military leave policy that provides unpaid military leave
9 for LAPD employees performing military service at a “battle assembly” or “drill,”
10 LAPD required Plaintiff Craig to schedule his regular days off on his battle assembly
11 dates, to prevent him from taking additional unpaid military leave from his employment
12 at LAPD.

13 29. In addition to monthly battle assembly, Plaintiff Craig was generally
14 required to take military leave from his employment with LAPD to conduct “annual
15 training” every year. Annual training, or “AT,” generally lasted two-to-three weeks, but
16 could be longer depending on the specific training conducted.

17 30. Plaintiff Craig also executed long-term active-duty military orders seven
18 times during his employment with LAPD. These mobilizations varied in duration and
19 location, but include months-long deployments to Afghanistan, Iraq, Kosovo, and
20 others in support of domestic mission, such as responses to wildfires, riots, and
21 homeland security matters.

22 31. In early 2021, Plaintiff Craig took and passed the written and oral
23 examination for promotion to the rank of Captain I.

24 32. On April 28, 2021, the Administrative Services Bureau of the LAPD
25 announced the names and “whole score grades” of the candidates for promotion to the
26

1 rank of Captain I. Plaintiff Craig was placed in the Rank 4 category, with a “whole score
2 grade” of 80.

3 33. The “whole score grade” includes a candidate’s score on the written exam
4 and oral interview – weighted 30% and 70% of the total score, respectively. Captains
5 may also receive additional points related to time served in the LAPD as a Lieutenant,
6 up to one additional point towards their “whole score grade.”

7 34. The LAPD Chief of Police is not required to promote Captains in sequence
8 the of their Rank placement. Instead, the Chief of Police may exercise discretion in
9 selecting who to promote beyond the candidates “whole score grade,” and may skip
10 eligible candidates in a higher-scoring band to promote another candidate for promotion
11 in a lower band at his discretion.

12 35. At the time in Plaintiff Craig’s eligibility for promotion to Captain I, the
13 LAPD Chief of Police was Michel Moore (“Chief Moore”). Chief Moore served as the
14 LAPD Chief of Police from 2018 until 2024.

15 36. Chief Moore knew of Plaintiff Craig’s military service affiliation prior to
16 Plaintiff Craig’s eligibility for promotion to Captain I. Chief Moore and Plaintiff Craig
17 met in 2017, prior to Plaintiff Craig’s deployment to Afghanistan. Chief Moore and
18 Plaintiff Craig met several times during Plaintiff Craig’s employment with LAPD,
19 including a meeting in August of 2018 at Chief Moore’s office following Plaintiff
20 Craig’s reemployment to LAPD after his mobilization to Afghanistan wherein Chief
21 Moore hosted a promotion ceremony for Plaintiff Craig that occurred while Plaintiff
22 Craig was performing military service in Afghanistan.

23 37. In December of 2018, Plaintiff Craig received an “Honorable Recognition”
24 certificate signed by Chief Moore, including both Plaintiff Craig’s military rank of
25 Lieutenant Colonel and his LAPD rank of Lieutenant I, stating “I would like to thank
26

1 | you for your service, sacrifice, and unselfish leadership in the War against Terrorism...”

2 | 38. In May of 2019, Plaintiff Craig met with Chief Moore in Washington, DC
3 | at an event in which Plaintiff Moore was wearing his military service decorations on
4 | his LAPD dress uniform.

5 | 39. The April 28, 2021 list included thirty-nine candidates for promotion to
6 | Captain I in the Rank 1, 2 and 3 categories that scored higher than Plaintiff Craig,
7 | twenty-eight candidates that scored the same as Plaintiff Craig in the Rank 4 category,
8 | and at least six other candidates that scored less than Plaintiff Craig in the Rank 5, and
9 | Rank 6 categories.

10 | 40. Upon information and belief, Plaintiff Craig’s qualifications for promotion
11 | were superior to many of the candidates selected for promotion to Captain I in the LAPD
12 | from the April 28, 2021 list. Plaintiff Craig had greater experience, training, education,
13 | credentials, and overall performance than several candidates selected for promotion to
14 | Captain I.

15 | 41. Plaintiff Craig had more time serving as a police officer with LAPD than
16 | 38 of the 53 persons who were selected for promotion to Captain I.

17 | 42. Plaintiff Craig was a “dual status” officer, meaning that he served in LAPD
18 | as both a Detective and a Sergeant – a rare career path among LAPD police officers.
19 | His experience in this aspect included the arrest and conviction of a serial killer.
20 | Plaintiff Craig knows that at least six of those selected for promotion to Captain did not
21 | have “dual status” experience, and believes that less than half of those selected for
22 | promotion to Captain I did not have “dual status” experience.

23 | 43. Plaintiff Craig had extensive experience in planning and responding to
24 | large scale events. This included his work on the largest multi-agency gang enforcement
25 | search warrant operation in LAPD history, Operation Pirate Town, in which Plaintiff
26 |

1 Craig received a commendation for his contribution. Additionally, Plaintiff Craig's
2 formal training in this area, which included the Incident Command System in residence
3 at Texas A&M Engineering Extension Service, and the Enhanced All-Hazards Incident
4 Management/Unified Command training was typically reserved for LAPD Command
5 Staff ranking Captain and above. No other candidates selected for promotion to Captain
6 I had a greater level of training and experience in large scale events than Plaintiff Craig.

7 44. Plaintiff Craig had tremendous field experience. As a Lieutenant II, he
8 served as a both the OIC of the West Valley Division and the Vice Unit – which is
9 typically staffed by two separate LAPD officers. The majority of those selected for
10 promotion to Captain I did not have this level of responsibility in a supervisory role.

11 45. Plaintiff Craig's organizational leadership experience far exceeded those
12 were selected for promotion to Captain instead of him. For example, as a Battalion
13 Commander in the CAANG, Plaintiff Craig directed the actions of over 500 CAANG
14 personnel, whereas the average LAPD patrol division consisted of only approximately
15 200 personnel. None of those that were selected for promotion to Captain I are believed
16 to have this level of organization leadership experience.

17 46. Upon information and belief, less than half of those selected for promotion
18 to Captain I held a Master's Degree-level of formal education. Plaintiff Craig holds a
19 Master of Arts degree in Homeland Security (*cum laude*).

20 47. Despite Plaintiff Craig's qualifications, he was not selected for promotion
21 to Captain I.

22 48. Upon information and belief, approximately fifty-three candidates from
23 the April 28, 2021 list were promoted to the rank of Captain I.

24 49. Upon information and belief, none of the candidates selected for promotion
25 to Captain I from the April 28, 2021 list had a current military service obligation.
26

1 50. Upon information and belief, the April 28, 2021 list included at least two
2 other candidates eligible for promotion to the rank of Captain I with current military
3 service obligations, Mr. Eric Quan in the Rank 3 Category, and Mr. Jose Martinez in
4 the Rank 4 category. They were members of the USAR and United States Air Force
5 Reserve (USAFR), respectively.

6 51. Upon information and belief, neither Mr. Quan nor Mr. Martinez were
7 selected for promotion by the LAPD to Captain I.

8 52. Upon information and belief, LAPD promoted several candidates from the
9 April 28, 2021 list to the rank of Captain I who scored in the Rank 4, Rank 5, and Rank
10 6 categories.

11 53. Plaintiff Craig was not ranked higher on the April 28, 2021 list and not
12 selected for promotion to Captain I because of his continued service with the CA-
13 ARNG. Specifically, that the LAPD unlawfully denied his promotion to Captain I
14 because they did not want an employee in the rank of Captain I who also had a military
15 service obligation and potentially would be required to take military leave.

16 54. Upon information and belief, Chief Moore used his discretion in selecting
17 candidates for promotion to Captain I specifically to avoid selecting Plaintiff Craig to
18 the position of Captain I due to his knowledge of Plaintiff Craig's continuing service in
19 the CAANG, because he did not want an employee in the rank of Captain I who also
20 had a military service obligation and would potentially be required to take military
21 leave.

22 55. Believing his continued military service would prevent him from being
23 selected for promotion to Captain I despite his extensive credentials and qualifications
24 for the position, Plaintiff Craig retired from the LAPD as a Police Lieutenant II,
25 effective February 25, 2023.
26

1 **V. CLASS ACTION ALLEGATIONS**

2 56. Plaintiff brings this action on behalf of himself, and all others similarly
3 situated, as a class action pursuant to Rule 23(a) and 23(b)(1), 23(b)(2), and/or (b)(3) of
4 the Federal Rules of Civil Procedure.

5 57. The nationwide Class which Plaintiff seeks to represent are:

6 **Class:** All current and former employees of LAPD who are or were members of
7 the United States Armed Services Reserves or National Guard and who took or have
8 taken military leave while being employed by LAPD.

9 58. Plaintiff also seeks to represent the following Subclass:

10 **Unpaid Military Leave Subclass:** All current and former employees of LAPD
11 who took unpaid military leave from LAPD.

12 59. Plaintiff is a member of the Class and Subclass he seeks to represent.

13 60. The members of the Class are sufficiently numerous such that joinder of
14 all members is impracticable. LAPD is the third-largest police department in the United
15 States and employs over 12,000 persons. Although this number does not specify those
16 who did serve or are actively serving in the National Guard or Reserves, Plaintiff is
17 informed and believes that the Class exceeds 100 present and former employees. The
18 exact size of the Class is ascertainable through LAPD and COLA records, including but
19 not limited to LAPD and COLA's employment records.

20 61. There are questions of law and fact common to the Class, and these
21 questions predominate over individual questions. Such questions include, without
22 limitation:

23 A. whether LAPD's practice of limiting the amount of paid
24 military leave to 174 hours, violates USERRA;

25 B. whether LAPD's practice of reducing the number of credit
26 hours converted from days to less than eight (8) hours per

1 day for military leave only, while allowing eight (8) credit
2 hours per days for other comparable forms of non-military
3 leave violates USERRA;

4 C. whether LAPD's practice of denying promotions to
5 military servicemember employees who perform military
6 service obligations violates USERRA;

7 D. whether LAPD's acts and practices have violated
8 USERRA by discriminating against its employees who are
9 members of the National Guard or Reserves and have
10 taken military leave;

11 E. whether Plaintiff and the Class are entitled to
12 compensatory and/or liquidated damages, and;

13 F. whether injunctive and other equitable remedies for the
14 Class are warranted.

15 62. There are additional questions of law and fact common to the Unpaid
16 Military Leave Subclass, and these questions predominate over individual questions.
17 Such questions include, without limitation:

18 A. whether LAPD's practice of allowing sick time to accrue
19 for employees on paid military leave but not for employees
20 on comparable, unpaid military leave violates USERRA;

21 B. whether LAPD's practice of allowing vacation time to
22 accrue for employees on paid military leave but not for
23 employees on comparable, unpaid military leave violates
24 USERRA; and

25 63. The named Plaintiff will fairly and adequately represent and protect the
26 interests of the Class, have retained well qualified and experienced Class counsel, and
have no conflict of interests with the Class.

64. Plaintiff's claims are typical of the claims of all Class members in that each
took both paid and unpaid military leave and were subjected to the same policies and

1 practices of LAPD at issue in this case that are unlawful under USERRA.

2 65. Plaintiff's claims are typical of the claims of all Subclass members in that
3 Plaintiff: 1) took unpaid military leave; 2) were subjected to LAPD's policies and
4 practices on sick and vacation time accruals; and 3) were deprived of proper sick and
5 vacation time accruals.

6 66. This Class Action satisfies the requirements of proceeding under Federal
7 Rules of Civil Procedure 23(b)(3) because the questions of law or fact common to class
8 members predominate over any questions affecting only individual members, and a
9 class action is superior to other available methods for fairly and efficiently adjudicating
10 the controversy.

11 67. There are no other known actions pending related to the Class claims at issue
12 in this case, and Class members have no interests in individually controlling the
13 prosecution of separate actions.

14 68. Plaintiff knows of no difficulty to be encountered in the management of
15 this action that would preclude its maintenance as a class action. Plaintiff retained
16 adequate counsel who have substantial experience and success in the prosecution of
17 class actions, including USERRA class actions, and complex business litigation
18 matters. Direct notice of this Class Action may be given to all Class members by
19 utilizing the contact information available from LAPD's employment records.

20 69. Class certification is also appropriate pursuant to Fed. R. Civ. Proc. Rule
21 23(b)(2) because the Company has acted on grounds generally applicable to the Class,
22 making appropriate declaratory and injunctive relief to Plaintiff and the Class as a
23 whole. The Class members are entitled to injunctive relief to end the Company's
24 practices that have caused military affiliated employees to be terminated because of
25 their military service obligations and to be treated differently than employees without
26

1 military service obligations.
2

3 **VI. FIRST CAUSE OF ACTION – Sick Time Accrual, Violations of 38 U.S.C.**
4 **§ 4301, et seq.**

5 70. Plaintiff hereby alleges and incorporates all paragraphs 1-69 above by
6 reference herein.

7 71. Employees on military leave are entitled to the same non-seniority-based
8 benefits provided to other employees on similarly-situated, non-military related leaves
9 of absence. 38 U.S.C. § 4316(b)(1)(B).

10 72. LAPD employees taking paid military leave of thirty days or less
11 accumulate their full amount of sick time accrual as if they were not on a military leave
12 of absence. LAPD employees taking unpaid military leave will only have their sick time
13 replenished if they worked one day during the previous calendar year.

14 73. LAPD employees taking unpaid military leave are entitled to additional
15 sick time because non-military employees accrue sick leave during longer periods of
16 other types of non-military leave.

17 74. Plaintiff took unpaid military leave during his employment with LAPD,
18 accruing less sick leave than LAPD employees taking paid military leave, or non-
19 military employees taking other types of non-military leave.

20 75. LAPD's policy of requiring Plaintiff to use their regular days off to
21 perform battle assemblies or drill weekends prevented them from taking unpaid military
22 leave, resulting in their accrual of less sick leave than LAPD employees taking paid
23 military leave, or non-military employees taking other types of non-military leave.

24 76. Plaintiff and the Class's military service obligations were a motivating
25 factor in LAPD's discriminatory actions.

26 77. LAPD knowingly and willfully violated USERRA, among other ways, by

1 discriminating against Plaintiff and the Class members, and by denying them
2 employment benefits “on the basis of” their “obligation to perform service in a
3 uniformed service.”

4 78. As a direct and proximate result of the conduct of the LAPD, as set forth
5 in this count, Plaintiff and the Class have suffered injuries and damages including but
6 not limited to loss of past and future benefits, all to their damage in an amount to be
7 proven at trial.

8 79. Plaintiff alleges such violations of USERRA were willful and requests
9 liquidated damages to the Class in an additional amount equal to the present value of
10 their lost sick time benefits pursuant to Section 4323(d)(1)(C).

11 **VII. SECOND CAUSE OF ACTION – Vacation Time Accrual, Violations of 38**
12 **U.S.C. § 4301, et seq.**

13 80. Plaintiff hereby alleges and incorporates all paragraphs 1-79 above by
14 reference herein.

15 81. Employees on military leave are entitled to the same non-seniority-based
16 benefits provided to other employees on similarly-situated, non-military related leaves
17 of absence. 38 U.S.C. § 4316(b)(1)(B).

18 82. LAPD has a regular days off (“RDO”) policy wherein employees are
19 entitled to eight regular days off during a 28-day deployment period. Additionally,
20 employees are entitled to thirteen days off in lieu of holidays for each year.

21 83. LAPD reduces an employee’s unused RDOs and/or holiday time off by
22 one day for every three and one-quarter days an employee is absent from duty due to
23 taking paid military leave and/or unpaid military leave.

24 84. Non-military LAPD employees do not have their RDOs or holiday time
25 reduced when taking other types of non-military leave.

26 85. LAPD employees taking paid military leave of thirty days or less

1 accumulate their full amount of vacation time accrual as if they were not on a military
2 leave of absence. LAPD employees taking unpaid military leave have their vacation
3 time prorated according to the amount of time they were on unpaid military leave the
4 previous calendar year.

5 86. Plaintiff took unpaid military leave during his employment with LAPD,
6 accruing less vacation time than LAPD employees taking paid military leave, or non-
7 military employees taking other types of non-military leave.

8 87. LAPD employees taking unpaid military leave are entitled to additional
9 vacation time because non-military employees accrue vacation leave during periods of
10 other types of non-military leave.

11 88. Plaintiff and the Class's military service obligations were a motivating
12 factor in LAPD's discriminatory actions.

13 89. LAPD knowingly and willfully violated USERRA, among other ways, by
14 discriminating against Plaintiff and the Class members, and by denying them
15 employment benefits "on the basis of" their "obligation to perform service in a
16 uniformed service."

17 90. As a direct and proximate result of the conduct of LAPD as set forth in this
18 count, Plaintiff and the Class have suffered injuries and damages including but not
19 limited to loss of past and future benefits, with damages in an amount to be proven at
20 trial.

21 91. Plaintiff alleges such violations of USERRA were willful and request
22 liquidated damages to the Class in an additional amount equal to the present value of
23 their lost vacation time benefits pursuant to Section 4323(d)(1)(C).

24 **VIII. SIXTH CAUSE OF ACTION – Failure to Promote Based on Military**
25 **Service Obligations, Violations of 38 U.S.C. § 4301, et seq.**

26 92. Plaintiff hereby alleges and incorporates all paragraphs 1-91 above by

1 reference herein.

2 93. USERRA prohibits “discrimination against persons because of their
3 service in the uniformed services.” 38 U.S.C. §4301(a)(3).

4 94. Section 4311(a) of USERRA states in relevant part, that a person “who is
5 a member of... performs, has performed...or has an obligation to perform service in a
6 uniformed service shall not be denied... promotion...or any benefit of employment by
7 an employer on the basis of that membership... performance of service, or obligation.”
8 (emphasis added).

9 95. Section 4311(c) further provides, in relevant part, that “[an] employer shall
10 be considered to have engaged in actions prohibited... if the person’s membership... or
11 obligation for service in the uniformed services is a motivating factor in the employer’s
12 action.”

13 96. LAPD operated under policies of discrimination as set forth above, which
14 resulted in a general policy and practice of discrimination by denying promotions to its
15 employees due to their taking leave to perform military duty in violation of USERRA.

16 97. Plaintiff was denied promotion following military leaves of absence.
17 Plaintiff and the Class’s protected status as members of the military was a motivating
18 factor in LAPD’s denial of benefits, conditions, and privileges of Plaintiff employment,
19 to include denying promotions to higher ranks in the LAPD without good cause, and as
20 a result of their military responsibilities.

21 98. LAPD knowingly and willfully violated USERRA, among other ways, by
22 discriminating against Plaintiff, and by denying him promotion and employment
23 benefits “on the basis of” his “obligation to perform service in a uniformed service.”

24 99. As a direct and proximate result of the conduct of LAPD as set forth in this
25 count, Plaintiff has suffered injuries and damages including but not limited to loss of
26

1 past and future benefits, with damages in an amount to be proven at trial.

2 100. Plaintiff allege such violations of USERRA were willful and request
3 liquidated damages in an additional amount equal to the amount of lost wages and future
4 earnings related to denied promotions, to be proven at trial.

5 101. USERRA prohibits “discrimination against persons because of their
6 service in the uniformed services.” 38 U.S.C. §4301(a)(3).

7 102. Section 4311(a) of USERRA states in relevant part, that a person “who is
8 a member of... performs, has performed...or has an obligation to perform service in a
9 uniformed service shall not be denied... promotion...or any benefit of employment by
10 an employer on the basis of that membership... performance of service, or obligation.”
11 (emphasis added).

12 103. Section 4311(c) further provides, in relevant part, that “[an] employer shall
13 be considered to have engaged in actions prohibited... if the person’s membership... or
14 obligation for service in the uniformed services is a motivating factor in the employer’s
15 action.”

16 104. “Benefit” is defined as:

17 The term ‘benefit’, ‘benefit of employment’, or ‘rights and
18 benefits’ means the terms, conditions, or privileges of
19 employment, including any advantage, profit, privilege, gain,
20 status, account, or interest (including wages or salary for work
21 performed) that accrues by reason of an employment contract
22 or agreement or an employer policy, plan, or practice and
23 includes rights and benefits under a pension plan, a health
24 plan, an employee stock ownership plan, insurance coverage
and awards, bonuses, severance pay, supplemental
unemployment benefits, vacations, and the opportunity to
select work hours or location of employment.”

25 38 U.S.C. §4303(2).

26 105. A “benefit of employment” includes the right to select work hours or the

1 location of employment. 20 C.F.R. §1002. 5(b).

2 106. In the Department of Labor's Fiscal Year 2010 report to Congress
3 (published in July 2011), the department clarified its interpretation that a "benefit of
4 employment" included freedom from workplace harassment and/or a hostile work
5 environment:

6 The Department of Labor considers it a violation of USERRA
7 for an employer to cause or permit workplace harassment, the
8 creation of a hostile working environment, or to fail to take
9 prompt and effective action to correct harassing conduct
10 because of an individual's membership in the uniformed
service or uniformed service obligations.

11 Department of Labor (USERRA) Fiscal Year 2010 Report to Congress.

12 107. USERRA's definition of "service in the uniformed services" covers all
13 categories of military training and service, including duty performed on a voluntary or
14 involuntary basis, in time of peace or war. 38 U.S.C. §4312(e)(1)(A)(i); 20 C.F.R.
15 §1002.115. (emphasis added).

16 108. Section 4312 of USERRA provides:

17 [A]ny person whose absence from a position of employment
18 is necessitated by reason of service in the uniformed services
19 shall be entitled to the reemployment rights and benefits and
other employment benefits of this chapter...

20 38 U.S.C. §4312(a).

21 109. Section 4313 of USERRA (further codified by 20 C.F.R. § 1002.191)
22 provides that an employee is entitled to be reemployed in a position that reflects with
23 reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she
24 would have attained if not for the period of service.

25 110. Section 4316 of USERRA provides that any period of absence from
26 employment due to or necessitated by uniformed service is not considered a break in

1 employment, so an employee absent due to military duty must be treated as though they
2 were continuously employed.

3 111. Section 4316 further provides that a person who is reemployed “is entitled
4 to the seniority and other rights and benefits determined by seniority that the person had
5 on the date of the commencement of service in the uniformed services plus the
6 additional seniority and rights and benefits that such person would have attained if the
7 person had remained continuously employed.”

8 112. “The employer must determine the seniority rights, status, and rate of pay
9 as though the employee had been continuously employed during the period of service.”
10 20 C.F.R. §1002.193.

11 113. USERRA expressly supersedes any state or local law, agreement, and/or
12 employer policy. 38 U.S.C. § 4302(b); 20 C.F.R. § 1002.7(b).

13 114. An employee need not request time off or permission to perform military
14 service obligations. The employee must give notice to the employer, such notice may
15 be verbal or written, and need not follow any particular format. 20 C.F.R. §§ 1002.87;
16 1002.85(b).

17 115. An employee need not provide documentation prior to performing periods
18 of military service obligations, only upon reemployment after periods of service of more
19 than thirty days. 20 C.F.R. §§ 1002.121; 1002.122; 1002.123.

20 116. USERRA provides at a minimum, an employee must have enough time
21 after leaving the employment position to travel safely to the uniformed service site and
22 arrive fit to perform the service. “If the employee performs a full overnight shift for the
23 civilian employer and travels directly from the work site to perform a full day of
24 uniformed service, the employee would not be considered fit to perform the uniformed
25 service. An absence from that work shift is necessitated so that the employee can report
26

1 for uniformed service fit for duty.” 20 C.F.R. § 1002.74(a).

2 117. An employee may use any paid time off (“PTO”) during his or her period
3 of military leave, but an employer may not require the employee to use accrued
4 vacation, annual, or similar leave during a period of service in the uniformed services.
5 38 U.S.C. § 4316(d); 20 C.F.R. §1002.153.

6 118. Plaintiff’s protected status as members of the military was a motivating
7 factor in LAPD’s denial of benefits, conditions, and privileges of Plaintiff’s employment,
8 to include denying promotions to higher ranks in the LAPD without good cause, and as
9 a result of their military responsibilities.

10 119. One of the benefits of employment available to the Plaintiff and the Class
11 is the right to retention in employment while performing their military service
12 obligations, and to be provided the same seniority rights, status, and rate of pay as
13 though the employee had been continuously employed during the period of service.

14 120. LAPD’s policy and practice of denying promotions to its employees due
15 to their taking leave to perform military duty violates USERRA.

16 121. LAPD’s policy of denying training opportunities to its employees due to
17 their taking leave to perform military duty violates USERRA.

18 122. Plaintiff and the Class’s military service obligations were motivating
19 factors in LAPD’s discriminatory actions.

20 123. LAPD knowingly and willfully violated USERRA, including but not
21 limited to Section 4311, 4312, 4313 and 4316, among other ways, by discriminating
22 against Plaintiff and the Class members, and by denying them employment benefits “on
23 the basis of” their “obligation to perform service in a uniformed service.”

24 124. As a direct and proximate result of the conduct of LAPD, as set forth in
25 this count, Plaintiff and the Class have suffered injuries and damages including but not
26

1 limited to loss of past and future benefits, all to their damage in an amount to be proven
2 at trial.

3 125. Plaintiff alleges such violations of USERRA were willful and request
4 liquidated damages to the Class in an additional amount equal to the present value of
5 their lost wages and other benefits pursuant to Section 4323(d)(1)(C).

6 **JURY DEMAND**

7 126. Pursuant to Federal Rule of Civil Procedure 38 or any similar rule or law,
8 Plaintiff demands a trial by jury for all causes of action and issues for which trial by
9 jury is available.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, based on the foregoing, Plaintiff prays for relief against
12 Defendants, and each of them, as follows:

13 1. Determine that this action may proceed and be maintained as a class action,
14 designating Plaintiff as Lead Plaintiff, and certifying Plaintiff as the Class
15 representatives under Rule 23 of the Federal Rules of Civil Procedure and their counsel
16 of record as Class Counsel;

17 2. Declare that the acts and practices complained of herein are unlawful and
18 are in violation of USERRA;

19 3. Require that LAPD and COLA fully comply with the provisions of
20 USERRA by providing Plaintiff and Class Members all employment benefits denied
21 them as a result of LAPD and COLA's unlawful acts and practices described herein;

22 4. Enjoin LAPD and COLA from taking any action against Plaintiff and
23 members of the Class that fail to comply with the provisions of USERRA;

24 5. Award fees and expenses, including attorneys' fees pursuant to 38 U.S.C.
25 §4323(h);
26

1 6. Award Plaintiff and the Class prejudgment interest on the amount of lost
2 wages or employment benefits due;

3 7. Order that LAPD and COLA pay compensatory and/or liquidated damages
4 in an amount equal to the amount of lost compensation and other benefits suffered due
5 to its willful violations of USERRA;

6 8. Grant an award for costs of suit incurred; and

7 9. Grant such other and further relief as may be just and proper and which
8 Plaintiff and the Class may be entitled to under all applicable laws.

9 DATED: October 15, 2024

10
11 /s/ Brian J. Lawler
12 Brian J. Lawler

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16
17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on October 15, 2024, I electronically filed the above with the
19 Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing
20 to all counsel of record.

21 /s/ Brian J. Lawler
22 Brian J. Lawler